

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re: The Financial Oversight and
Management Board of Puerto Rico

As Representative of

The Commonwealth of Puerto Rico

Puerto Rico Sales Tax Financing
Corporation's ("COFINA"), *et al*

Debtors

PROMESA, Title III

No. 17-BK-3283 (LTS)

No. 17-BK-3284 (LTS)

(Jointly Administered)

**RESPONSE TO TWELFTH OMNIBUS OBJECTION TO COFINA CLAIM NUMBER
15428**

TO THE HONORABLE LAURA TAYLOR SWAIN:

COMES NOW Creditor **TOMÁS CORREA-ACEVEDO** (from hereinafter "Correa-Acevedo"), by and through his undersigned counsel, and submits his response to Puerto Rico Sales Tax Financing Corporation's ("COFINA") Twelfth Omnibus Objection to proof of claim number 15428. In support of his claim, Correa-Acevedo respectfully **STATES** and **PRAYS** as follows:

Preliminary Statement

Creditor Correa-Acevedo timely filed proof of claim number 15428 in the COFINA Title III bankruptcy case. Nonetheless, claimant was served with the *Notice of Puerto Rico Sales Tax Financing Corporation's Twelfth Omnibus Objection (Non-Substantive) to Duplicate Bond Claims* (Docket # 4416), in which his claim was objected on grounds that "Claimant asserts liabilities associated with municipal bond(s) issues by COFINA, which are duplicative of one or more master proofs of claim filed by the trustee of these bond(s)." Docket # 4416-1, page 64. As it shall be more fully demonstrated below, Correa-Acevedo's claim should be allowed as filed.

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I. COFINA's Objection Failed to Submit the Necessary Counterevidence to Refute the *Prima Facie* Validity or Legal Sufficiency of Correa-Acevedo's Proof of Claim

Under Section 502(a) of the Bankruptcy Code, 11 U.S.C.A. § 502(a), a proof of claim is deemed to be allowed unless objected. *In re Thompson*, 965 F.2d 1136, 1147 (1st Cir. 1992). Once the proof of claim is filed, the burden of proof shifts to the party who seeks to object its validity or sufficiency. *In re Virginia Broadband, LLC*, 521 B.R. 539, 561 (W.D. Va., 2014).

A proper objection must include sufficient evidence to refute the proof of claim's validity or legal sufficiency. See Fed.R.Bank. P. 3001(d)(5); *In re LaFata*, 483 F.3d 13, 23 (1st Cir. 2007); *In re Rowlands*, 2008 Bankr. Lexis 3958, at *11 (1st Cir. B.A.P., 2008). See also 4 *Collier on Bankruptcy* ¶502.02[3][f] (LexisNexis Electronic Database, last accessed on January 24th, 2019); Hon. Joan N. Feeney, Hon. Michael G. Williamson, and Michael J. Stepan, *Bankruptcy Law Manual*, 5th Ed., Vol. 1, §§ 6:6 and 6:10, p. 1107 and 1126 (Thomson Reuters, 2017-1); and George M. Treister, *et al*, *Fundamentals of Bankruptcy Law*, 6th Ed., §6.02, p. 311 (ALI ABA, 2006).

An objection does not overcome the proof of claim's *prima facie* validity unless its counterevidence has substantial probative merit. *In re Hemingway Transport, Inc.*, 993 F.2d 915, 925 (1st Cir. 1993); *In re Rowlands*, 2008 Bankr. Lexis at * 10-11; *In re Tracey*, 394 B.R. 635, 639 (1st Cir. B.A.P., 2008). It is only after the objector's burden has been met, that the onus shifts back to claimant to prove her/his claim. *In re Newfound Lake Marine, Inc.*, 2007 BNH 35, at *5 (Bankr. N.H., 2007); *In re Mulvania*, 214 B.R. 1, 5-6 (9th Cir. B.A.P., 1997).

COFINA objected Correa-Acevedo's proof of claim due to allegedly being a duplicate of a Master Proof of Claim that was supposedly filed on his behalf. However, no entity ever contacted Correa-Acevedo to advise or confirm that it would indeed file any Master Proof of Claim. In fact, Correa-Acevedo reviewed the case Docket multiple times prior to the claim bar date and could not identify any Master Proof of Claim that included his COFINA bonds—so filed his own proofs of

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claim. To this date, claimant has not seen or been furnished with a copy of any Master Proof of Claim that includes his COFINA claims. Should one be furnished and its contents be correct, then Correa-Acevedo may be in position to withdraw proof of claim number 15428.

As COFINA's objection failed to include the requisite counterevidence (i.e. a Master Proof of Claim that includes Correa-Acevedo's COFINA claims) to overcome claimant's proof of claim's *prima facie* validity and legal sufficiency, said claim should be allowed as filed.

WHEREFORE, creditor **TOMÁS CORREA-ACEVEDO** respectfully requests that his claim be allowed as filed.

Certificate of Service

I HEREBY CERTIFY that on this same date a true and exact copy of this response was electronically filed with the Clerk of the Court using the CM/ECF system, which will automatically send a notification thereof to all attorneys registered in said system.

I FURTHER CERTIFY that on this very same date, a true and exact copy of this response was also served via First-Class Mail postage pre-paid to: i) Hon. Laura Taylor Swain's Chambers, United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl St., Suite 3312, New York, New York 1007-1312; ii) Honorable Judge Judith Dein's Chambers Joseph Moakley United States Courthouse, One Courthouse Way, Room 6420, Boston, MA 02210-3002; iii) Office of the United States Trustee for Region 21, Edificio Ochoa, 500 Tanca Street, Suite 301, San Juan, PR 00901-1922; iv) Counsel for the Oversight Board, Proskauer Rose, LLP, Eleven Times Square, New York, New York, 10036-8299, Attn: Martin J. Bienenstock, Paul V. Possinger, Ehud Barajk, and Maka Zerjal; and v) Counsel for the Unsecured Creditors' Committee, Paul Hastings, LLP, 200 Park avenue, New York, New York 10166, Attn: Luc A. Despins, James Bliss, James Wotrthington, and G. Alexander

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In Guaynabo, Puerto Rico, this 28th day of January, 2019.

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